United Nations A/HRC/29/27/Add.3

General Assembly

Distr.: General
12 May 2015

Original: English

Human Rights Council
Twenty-ninth session
Agenda item 3
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo

Addendum

Mission to Afghanistan*

Summary

The present report contains the findings of the Special Rapporteur on violence against women, its causes and consequences, following her visit to Afghanistan from 4 to 12 November 2014. It examines the situation of violence against women, its causes and consequences, the responses of the State and the international community to such violence, and the remaining challenges, including by reviewing the progress made since the visits of her predecessors in 1999 (E/CN.4/2000/68/Add.4) and in 2005 (E/CN.4/2006/61 Add.5).

* The summary of the present report is circulated in all official languages. The report itself, which is annexed to the summary, is circulated in the language of submission only.

GE.15-09490 (E)

1509490

Please recycle

Annex

[English only]

Report of the Special Rapporteur on violence against women, its causes and consequences, on her mission to Afghanistan (4–12 November 2014)

Contents

		Paragraphs	*Page*
I.	Introduction	1–5	3
II.	National context	6–11	3
III.	Manifestations of violence against women and girls, including its causes and consequences	12–28	5
	A. Violence against women in the family	13–18	5
	B. Violence against women in the community	19–22	7
	C. Violence against women perpetrated and/or condoned by the State	23–26	7
	D. Violence against women linked to the transnational sphere	27–28	8
IV.	Responses in addressing violence against women	29–54	9
	A. National responses	31–45	9
	B. International responses	46–54	13
V.	Remaining challenges	55–69	15
	A. Continuum of violence and insecurity	56–57	15
	B. Women's participation in decision making and peace building process	58–62	16
	C. Lack of effective implementation of legislation and its impact on women's access to justice and effective remedies	63–69	17
VI.	Conclusions and recommendations	70–80	18
	A. Institutional machinery	71	18
	B. Law and policy reforms	72–75	19
	C. Women in detention	76–78	20
	D. Women working in the public sector	79	20
	E. International community	80	21

I. Introduction

1. The Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, visited Afghanistan at the invitation of the Government from 4 to 12 November 2014 to examine in a comprehensive manner the situation of violence against women in the country, including violence perpetrated within the family, in the community, in institutional settings and in the transnational sphere. She would like to thank the Government for the cooperation extended prior to and during her visit.

2. The Special Rapporteur is grateful for the support provided by the United Nations country team, and especially grateful for the logistical and substantive support provided by the Human Rights Unit within the United Nations Assistance Mission in Afghanistan (UNAMA).

3. During her nine-day visit, the Special Rapporteur held consultations in Kabul with high-ranking officials of the Ministries of Foreign Affairs, Women's Affairs, Interior and Justice. She also met with members of parliament; representatives from the Attorney General's Office and the Supreme Court of Justice and other judges and prosecutors; members of the police force, prison administration and medical staff in hospitals; and members of the Afghanistan Independent Human Rights Commission. She also met with the Governors and members of the local councils in Herat and Jalalabad.

4. In addition, the Special Rapporteur held meetings with representatives of civil society, United Nations agencies and members of the diplomatic corps. She also visited the Badam Bagh women's prison in Kabul, a juvenile rehabilitation centre and the burn clinic of the regional hospital in Herat and two shelters.

5. The Special Rapporteur is grateful to her interlocutors, including the women who shared their experiences of survival with her. She looks forward to a fruitful and continued dialogue with the Government and other stakeholders on the implementation of her recommendations.

II. National context

6. The four decades of prolonged armed conflict across the country has contributed to significant levels of instability, insecurity, violence, rule-of-law challenges, poverty and underdevelopment, which have obstructed the effective realization and enjoyment of human rights for people of Afghanistan.

7. The first visit by the mandate of the Special Rapporteur on violence against women, its causes and consequences took place in 1999, during the Taliban era. In her report, the mandate holder noted that discrimination against women was officially sanctioned, thus affecting every aspect of the lives of women. In addition to the various manifestations of violence, as commonly understood, the issuance of strict edicts banning women from education and work, restricting their freedom of movement and imposing particular dress codes, among others, has had a lasting and devastating impact on the lives of women and girls. The mandate holder called for the end to the armed conflict and the establishment, through peaceful political negotiations, of a broad-based multi-ethnic fully representative Government that would respect internationally recognized human rights and abandon all policies that are inconsistent with the international human rights instruments to which Afghanistan is party. Another crucial recommendation in the report was the need for women's involvement in the political and peace process. The mandate holder recommended that all parties to the conflict end the violations of the human rights of women and girls; ensure respect for women's right to security of the person; ensure justice and accountability

for crimes against women; and take urgent measures to ensure the elimination of all discriminatory legislation, policies and practices.

8. The second visit to Afghanistan by the mandate took place in 2005, four years after the fall of the Taliban regime. The mandate holder acknowledged that efforts to improve the status of women had been closely linked to the challenge of multiple political and economic transitions confronting Afghan society and, importantly, attempts to move from the rule of power to the rule of law. She highlighted the fact that the extraordinary level of violence against women and girls had been embedded in a traditional system of male domination in which girls and women had no status as independent persons. She noted that the persistence of patriarchal cultural norms and customs and the misinterpretation of religion had been used to subjugate women and further perpetuate the cycles of violence against them. She called for urgent measures to protect women and girls from violence and reiterated the need to build a strong democratic inclusive State that is able to ensure an environment of economic and social development from which women and girls would fully benefit.

9. Afghanistan is currently recovering from the decades of conflict and, while the economy has significantly improved since the fall of the Taliban regime in 2001, the country remains heavily dependent on foreign aid. Women constitute roughly 49 per cent of Afghanistan's population of 27.5 million, and it is estimated that around 36 per cent of the total population lives in total poverty. In households that experience acute poverty, a young girl may be perceived to be an economic burden and marriage into another family may become a survival strategy to reduce economic pressures on the household. Women's economic participation is hindered by restrictions on their mobility and inability to gain access to resources, markets and employment. The Government has taken positive steps towards the empowerment of women, including through the implementation of the Afghanistan National Development Strategy (2009-2012) and the National Action Plan for Women Advancement. However, there remain deeply engrained structural and societal challenges that hamper the realization of this goal, including gender discrimination and male preference.

10. Over the past 15 years, several legislative and institutional advances have been made towards the promotion of human rights broadly and women's rights in particular. These include the creation of a national human rights institution, a ministry for women's affairs at the national level and departments of women's affairs at the provincial level, human rights units in various ministries, gender units in some ministries and the enactment in 2009 of the landmark Law on the Elimination of Violence against Women. During the visit, the Special Rapporteur was also informed of several law reform initiatives to be carried out over the following year or so, including a comprehensive review of the Penal Code and the drafting of a law to regulate the jurisdiction and functioning of *jirgas* and *shuras* (informal communal councils).

11. The literacy rate for adults (15 years and older) is as low as 31.4 per cent in some areas, with an average of 17 per cent for women and 45.4 per cent for men at the national level. Despite significant progress in the country's education system since 2001, the Ministry of Education estimates that about 3.5 million school-aged children are out of school. The majority of these children are girls, children in remote areas, disabled children, nomad children and members of other vulnerable groups.[1] Despite the Government's efforts to ensure education for girls and boys, social and cultural obstacles keep many girls out of

[1] See United Nations Population Fund, "Afghanistan State of the Youth Report 2014", p. 6. Available from http://countryoffice.unfpa.org/filemanager/files/afghanistan/2014/reports/unfpasoayreportv333e.pdf.

school. Even for those girls who go to school, separate toilets and the necessary facilities for them during menstruation are lacking in most schools, resulting in girls missing at least a quarter of their educational life. In more remote areas, there is a shortage of female teachers, resulting in girls in those areas foregoing their education. Teachers are sometimes brought in from other provinces to address the shortage; however, insecurity and fear of violence for teachers and female students while travelling to neighbouring schools serves as a deterrent to mobility.

III. Manifestations of violence against women and girls, including its causes and consequences

12. The sections below illustrate the current status of the most prevalent forms of violence against women, many of which were also identified in the mission reports of the previous mandate holders.

A. Violence against women in the family

13. Violence in the family sphere, including spousal violence and intrafamily violence, continues to affect women disproportionately. Most manifestations of violence are underreported in the context of a patriarchal and conservative society where domestic violence is not always perceived as a crime and is condoned by authorities that attribute the abuse to a woman's alleged disobedience of her husband. It is estimated that up to 87.2 per cent of women have experienced at least one form of physical, sexual or psychological violence, or forced marriage. More than 60 per cent of women experience multiple forms of violence.[2] A total of 4,505 cases of violence against women were registered by the joint database of the Ministry of Women's Affairs, Ministry of Interior and the Attorney General's Office from March 2012 to March 2013 in 32 provinces.[3] During the first half of 2013, the Afghanistan Independent Human Rights Commission registered 4,154 cases of violence against women, including 1,249 cases of physical violence, 976 cases of psychological violence, 862 cases of economic violence, 262 cases of sexual violence, and 805 cases of other types of violence. The Special Rapporteur was informed that, in the context of marriage, rape is seldom acknowledged or reported, since women do not have the freedom to decide whether or not to have sexual intercourse with their husband. In spite of its prevalence, domestic violence is not explicitly classified as a crime in the Penal Code, though it may constitute beating and laceration under articles 407 and 408. It has been reported that, during criminal investigations of domestic violence cases, including in the criminal and family courts, a factor often taken into account is whether the violence was a response to a woman's disobedience. This then results in decisions not to prosecute cases, or in the reduction of sentences.[4]

14. The legal age for marriage is 18 for boys and 16 for girls, although, under certain circumstances, a girl may marry at the age of 15 in accordance with articles 70 and 71 of the Penal Code. Nonetheless, early marriage practices remain prevalent. It is reported that 17.3 per cent of girls aged 15 to 19 are married. The 2010–2011 Afghanistan Multi Indicator Cluster Survey found that 15.2 per cent of surveyed women were married before

[2] Ibid., p. 5.

[3] See Ministry of Women's Affairs, "First Report on the Implementation of the Elimination of Violence against Women Law in Afghanistan" (January 2014), p. 1.

[4] See United Nations Office on Drugs and Crime (UNODC), "Afghanistan: Female prisoners and their social reintegration, March 2007", p. 21.

the age of 15 and 46.4 per cent before 18.[5] As noted by the previous mandate holder, the practices of child and forced marriages are at the root of most violence that takes place in the household, but are also amplified in other spheres (see E/CN.4/2006/61/Add.5, para. 23). A girl child is seen as an asset exchangeable for money or goods owing to the practice of the bride price (ibid. para. 24). Moreover, the importance of preserving family honour and girls' virginity is such that parents push their daughters into marriage well before they are ready. Poverty, as well as tradition, culture and religion, are used to justify early and/or forced marriages without regard for the adverse effects that such practices have on the health and well-being of the child. Girls who marry early have their first children at a younger age. Early childbearing contributes to pregnancy-related deaths and birth complications, which are the leading cause of mortality among girls.

15. Some of the victims of early and/or forced marriage often resort to committing self-immolation. Although not all women and girls who take this action intend to kill themselves, they inflict severe injuries upon themselves, which in some cases results in their death. The Afghanistan Independent Human Rights Commission recorded a total of 133 cases of self-immolation from March to November 2011. However, the Special Rapporteur was unable to confirm the prevalence of this practice during her visit. At the Burn Clinic in Herat, she was informed that there was a declining trend in the phenomenon and that a burn injury could only be categorized as a self-immolation subject to a confession from the victim, even if the medical evidence was conclusive.

16. Women and girls also run away from home as a response to harmful practices, including physical, psychological or sexual abuse, or being forced into marriage, to avoid death at the hands of their relatives. Running away is neither a crime under Afghan law, as there is no provision in the Penal Code that addresses the issue; nor is it a crime under sharia law. However, the authorities sometimes charge women and girls who run away, with the "intention" to commit sexual intercourse outside of marriage (*zina*) or attempted *zina*, which is considered to be a crime against God's commands under sharia law. They can also be charged for the crime of *zina* under article 427(1) of the Afghan Penal Code.[6]

17. The Afghanistan Independent Human Rights Commission registered more than 280 women who had been killed by family members during 2011 and 2012. Most of these killings had been carried out on women and girls who had refused to enter into an arranged marriage or had been accused of having a relationship that the family considered to be inappropriate. Given the sensitivities surrounding this phenomenon, many of the cases are concealed, and other explanations are provided for the deaths.

18. Some interlocutors raised concerns about the issue of incest, including when committed against minors. The taboo nature of the crime results in victims not speaking about or reporting the abuse. The Special Rapporteur heard the testimony of a young woman who had been raped by her father for nearly a decade. In addition to the rapes, threats and abuse she suffered, she had been forced to abort a number of pregnancies, but was able to continue with one pregnancy. The victim alleged that some family members had wanted to kill the baby to destroy evidence of sexual violence. Members of the family were aware of the abuse, but no one intervened, out of fear.

[5] See United Nations Population Fund, "Afghanistan State of the Youth Report 2014", p. 9.

[6] See United Nations Assistance Mission in Afghanistan (UNAMA) and the Office of the United Nations High Commissioner for Human Rights (OHCHR), "A long way to go: implementation of the Law on elimination of violence against women in Afghanistan" (December 2012), p. 22. Available from http://unama.unmissions.org/LinkClick.aspx?fileticket=Qy9mDiEa5Rw%3D&ta

B. Violence against women in the community

19. Women are perceived as the custodians of a family's "honour" and are seen as "dishonouring" their families and communities when they are subjected to sexual violence. As such, it is the rape victim who carries the shame of the crime in many cases.[7] Women and girls who live in rural areas, unaccompanied women, widows, divorced women and women whose husbands are away are at a greater risk of becoming victims of rape.[8]

20. A significant number of rape incidents occur during armed robberies, kidnapping and gang activity in general. A typical example includes an incident in 2014 in which seven men dressed in police uniforms and armed with Kalashnikov rifles stopped two cars heading into Kabul. The armed men forced the occupants out of their cars, took money and jewellery and then proceeded to rape four women, including a pregnant woman. During a two-hour trial in September 2014, the seven men were charged with armed robbery and *zina* and sentenced to death under the provision of the 1987 Law on Crimes against Internal and External Security, which makes banditry punishable by death. The fact that the accused men were not charged with rape but with the crime of *zina* implies that the consent of the women had been obtained.[9]

21. The Special Rapporteur was concerned at the escalating level of targeted attacks against high-profile women, particularly those working in the public sector. For instance, in February 2015, a former journalist and member of the provincial council of Nangarhar Province was wounded in an explosion in Jalalabad city and died a week later. In November 2014, a parliamentarian was targeted in a suicide attack, which resulted in the death of three individuals.

22. Earlier in 2014, another parliamentarian was wounded in an attack when leaving her office. Her sister, who is also a member of parliament and a prominent women's rights activist, was attacked in 2010. In 2013, a senator lost her daughter in an attack on her car and a parliamentarian was kidnapped and held for several weeks before being released. In July 2013, the highest-ranking female police officer in Helmand was shot and killed on her way to work. In July 2012, the head of the Department of Women's Affairs in eastern Laghman province was killed by a car bomb as she left for work. Gunmen killed her replacement in December 2012. These examples are illustrative of the systematic pattern of attacks against women working in the public domain. These attacks occur with impunity and often serve as a warning to other women who aspire to hold such positions.

C. Violence against women perpetrated and/or condoned by the State

23. During her visits to the Badam Bagh women's prison in Kabul and the juvenile rehabilitation centre in Herat, the Special Rapporteur expressed serious concern at the high number of women and girls arrested, prosecuted and imprisoned for so-called "moral crimes", including adultery and premarital sex. Interlocutors stated that such convictions were often made on the basis of minimal evidence of wrongful behaviour and that investigations were often not properly carried out. Of the 744 female prisoners across the country, 428 — or 58 per cent — were charged with so-called "moral crimes".[10] In the Badam Bagh prison, where 159 women were held at the time of the visit, the Special

[7] See UNAMA and OHCHR, "Silence is violence: end the abuse of women in Afghanistan" (8 July 2009), p. 21. Available from http://unama.unmissions.org/Portals/UNAMA/vaw-english.pdf.

[8] Ibid., p. 29.

[9] See www.hrw.org/news/2014/09/08/afghanistan-gang-rape-trial-badly-flawed.

[10] Information provided by the UNAMA Rule of Law Unit on 5 November 2014.

Rapporteur was informed that 90 women were in pretrial detention and 69 had been convicted. A total of 11 girls were being held at the juvenile rehabilitation facility in Herat, most of who had been arrested on charges of attempted *zina*.

24. The Special Rapporteur noted that the women's versions of the incidents prior to their detention was seldom taken into account, and that women victims were often treated as criminals by the criminal justice system, thus violating due process rights. One interviewee alleged that, following her rape by a relative, she was sentenced to six years of imprisonment, along with her rapist, for the crime of *zina*.

25. The forced submission to virginity testing of women and girls accused of moral crimes, including those have been raped, to gather evidence for the purposes of a conviction, was an issue of concern raised by women prisoners.

26. The widespread practice of harassment of female police officers by their peers and superiors is of concern as it serves to deter many women from joining or remaining in the police force. There are also allegations that sexual favours are often demanded in exchange for promotions. In addition, the lack of female-only facilities, including toilets and changing areas, further contributes to women's vulnerability.[11] During a meeting with the Provincial Policewomen's Council in Herat, the Special Rapporteur was informed that most of the cases the Council receives concern harassment, promotions and issues related to gender-based discrimination. In an effort to prevent harassment and the undermining of female police officers' authority by commanders and male police colleagues, and to integrate women as full, equal and respected professionals within the police force, the Ministry of Interior adopted the "Strategy for the Integration of Afghan National Police Female Personnel" in 2013. It outlines measures for recruiting more women and preventive measures to create an enabling environment for the protection of policewomen from sexual harassment and violence. Pursuant to Order No. 163, issued in March 2014, steps are under way to establish a commission tasked with drafting an action plan to operationalize the strategy. However, the strategy fails to incorporate a clear, detailed, confidential and enforceable complaints mechanism that could lead to either disciplinary action or, if warranted, criminal sanctions against perpetrators of harassment or abuse of authority.[12]

D. Violence against women linked to the transnational sphere

27. There has been a significant increase in internal displacement over the past few years as a consequence of the conflict. Other causes of displacement include generalized violence, serious violations of human rights, natural disasters, development projects and man-made disasters. It has been reported that, at the end of September 2014, 755,011 individuals had been internally displaced in Afghanistan.[13] Afghan internally displaced persons do not live in camps, but in informal settlements on the outskirts of major cities. The overcrowded living situation increases the risks of violence for women. Many of them are subjected to domestic violence and forced marriages. Furthermore, the switch in traditional housing conditions, including the move from rural to urban environments, have

[11] See Oxfam, "Women and the Afghan Police" (10 September 2013). Available from https://www.oxfam.org/en/research/women-and-afghan-police.

[12] Inputs provided by UNAMA on progress and existing gaps in the implementation of Security Council resolution 1325 (2000) for women and girls during 2013 and early 2014 in the areas of prevention, participation, relief and recovery and protection, dated 30 March 2014.

[13] UNHCR confidential report.

an effect on women's freedom of movement, as they cannot benefit from the protection of their courtyards, gardens and villages.[14]

28. More than 60 per cent of trafficking in women and children takes place inside Afghanistan, while cross-border trafficking occurs in 40 per cent of the cases, for the purposes of sexual exploitation, domestic servitude and sale of narcotics.[15] Female victims of trafficking not only experience sexual assaults and slavery from the perpetrator, but also are victims of honour killings and subjected to violence by their own families after being rescued.[16]

IV. Responses in addressing violence against women

29. With the adoption of resolution 1325 (2000) and six subsequent resolutions on women, peace and security (1820 (2008), 1888 (2009), 1960 (2010), 2106 (2013) and 2122 (2013)) the Security Council outlined concrete actions to be taken by the international community and respective Member States to address the issues of women, peace and security. In November 2014, the Government of Afghanistan adopted its 2015-2018 National Action Plan on the implementation of resolution 1325 (2000).

30. Since the fall of the Taliban era, the international community, including the United Nations and international donors, has invested significant human, technical and material resources to assist the Government in its post-conflict peacebuilding and reconstruction efforts. Despite significant advances in the status of women, they continue to face severe challenges in the realization of their civil, political, economic, social and cultural rights. Prevailing insecurity and the generalized violence across the country, the existence of deep-rooted conservative social norms and cultural practices and the limitations on freedom of movement for women all contribute to women's role in public life being limited, including in political and peace processes.

A. National responses

31. The institutional framework for addressing women's rights includes a number of governmental bodies and institutions, both at the capital and the provincial levels, which have similar mandates and functions. Established in 2001 by a presidential decree, the Ministry of Women's Affairs is responsible for monitoring, supporting and coordinating the implementation of policies and legislation and developing and contributing to the development of policies for advancement of women, including the adoption of the 10-year National Action Plan for Women of Afghanistan in 2008. Under the supervision of the Ministry, State institutions are expected to mainstream gender in their policies, plans and activities, and ministries are encouraged to dedicate at least 30 per cent of their budget to it.

[14] See Majidi and Hennion, "Resilience in displacement? Building the potential of Afghan displaced women", *Journal of Internal Displacement*, vol. 4, No. 1 (January 2014). Available from http://samuelhall.org/REPORTS/Building%20the%20resilience%20of%20Afghan%20displaced%20women.pdf.

[15] See Afghanistan Independent Human Rights Commission, "Summary report on investigation of causes and factors of trafficking in women and children" (July 2011).

[16] See Afghanistan Independent Human Rights Commission, "National Inquiry Report on Factors and Causes of Rape and Honor Killing in Afghanistan" (Spring 2013).

The Plan commits the State to ensure the civil service comprises 30 per cent women by 2018.[17]

32. While the establishment of Ministry of Women's Affairs has been considered a positive sign, it has not been fully able to exercise its mandate effectively, owing to such challenges as inadequate budgetary allocation by the State; international donor funding dependency; a lack of independence; a lack of capacity of staff; cultural norms that affect functioning; the politicization of appointment processes; poor spatial infrastructure; and a lack of adequate security in the workplace. The lack of substantive support by the Government for the Ministry, in comparison with other ministries, was observed during the mission.

33. There are a total of 27 gender units within the different ministries. Some units are staffed only with a gender focal point, who have no access to the Ministry's budget and are without a clear job description. Most of the units lack staff, office space and technical equipment. In March 2010, the Government established the Special Violence against Women Unit of the Attorney General's Office to investigate and prosecute cases of violence against women and support and assist victims throughout the process. The unit registered 285 cases from Kabul province between March 2010 and March 2011, but filed indictments with the courts in only 21 of those cases. More than 70 per cent of cases were closed, archived, withdrawn or mediated owing to prevalent cultural and traditional norms. Since then, specialized units for the elimination of violence against women have been set up in eight provinces.[12] The Ministry of Interior established family response units staffed by policewomen throughout the country, mainly in the provincial capitals. There are 17 such units in Kabul and, as at May 2013, there were 184 units in 33 provinces.[18] The units mainly handle domestic disputes and domestic violence and are rarely involved in investigating cases of rape, self-immolation or forced marriage.

34. The High Commission for the Elimination of Violence against Women is mandated to coordinate activities among government, non-governmental institutions and related organizations to "effectively combat violence". It is chaired by the Ministry of Women's Affairs and its members include the Deputy Attorney General and the Deputy Ministers of Interior; Justice; Public Health; Information and Culture; Education; Higher Education; Labour, Social Affairs, Martyrs and the Disabled; and Hajj and Religious Affairs. Membership is also open to the Afghanistan Independent Human Rights Commission, the Head of the Special Family Court and the Head of the Afghanistan Independent Bar Association. Commissions on the elimination of violence against women have also been established in 32 of 34 provinces to coordinate, plan and track the implementation of the Law.

35. The Afghanistan Independent Human Rights Commission was established in 2002 through a presidential decree in line with the provisions of the Bonn Agreement. The Commission consists of nine Commissioners appointed by the President for a five-year term. It is mandated to monitor the human rights situation, promote and protect human rights, conduct investigations into human rights violations and take measures for the improvement and promotion of human rights nationwide. The Commission employs approximately 600 staff working in regional and provincial offices across the country and plays a central role in monitoring, reporting and advocating for women's rights broadly, including gender-based violence. The Commission works with a wide range of stakeholders, including United Nations agencies and religious leaders.

[17] See Ministry of Women's Affairs, "First Report on the Implementation of the Elimination of Violence against Women Law in Afghanistan" (January 2014), p. 14.

[18] Ibid., p. 16.

36. Despite considerable achievements and the progress made in the area of human rights in the country, the Afghanistan Independent Human Rights Commission continues to face numerous challenges in achieving its objectives and implementing its activities. Owing to the high level of insecurity, the Commission services cover just 44 per cent of the area linked to its provincial and regional offices, and many districts are deprived of services provided by the Commission.[19] Other obstacles include a weak presence of the rule of law, a persistent culture of impunity, high levels of corruption, abuse of power by government officials and a weak judicial system. The human rights of women and children continue to be undermined by reports of egregious crimes and impunity for such crimes.[20] Furthermore, the Commission is almost entirely dependent on foreign Governments and international organizations for funding. The lack of appropriate State-allocated budgets has affected the planning and programmatic activities of the Commission.

37. Following the appointment of five new commissioners and the reappointment of four serving commissioners in June 2013, concerns were raised about the transparency of the selection process and the Afghanistan Independent Human Rights Commission was at risk of being downgraded from an A status institution to a B status. In addition to the limited consultation and transparency in the appointment of commissioners, other issues highlighted during the November 2013 review of the Commission by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights was the gender imbalance of the its staff and its insufficient State funding. However, in October 2014, the Committee recommended that the Commission be re-accredited with an A status, which has since been done.[21] The Special Rapporteur commends the Commission for its commitment and leading role in addressing the issue of violence against women in the country, despite the constraints and challenges it faces.

38. In August 2010, the High Council of the Supreme Court, in approval number 572, instructed prosecutors on how to handle "runaway" cases, by invoking article 130 of the Constitution. According to the instruction, courts should assess whether runaway women are single or married, the cause and motive for running away and the place to which the woman has run. If a woman runs to escape harassment and disturbance by family members and goes to a relative's house, the house of a legitimate *mahram* (unmarriageable kin) or to a justice institution, then this shall not be regarded as a crime from the sharia perspective. However, if a woman goes to a stranger's house, even if it is to escape ill-treatment, the instruction states that she exposes herself to crimes such as "adultery and other associated offences", which are considered illegal under sharia law, and thus prohibited and punishable.[6] Other instructions have been issued on how to handle "runaway" cases, including from the Attorney General's Office. Urgent Communication No. 91/02 of 11 April 2012 requests that units for the elimination of violence against women issue instructions to all prosecution offices not to press charges against women for "running away" or "attempted *zina*" – as these are not actual codified crimes under Afghan law. Furthermore, in December 2012, the Supreme Court sent a letter (No. 820/347) to the Attorney General's Office stating that running away from home to escape domestic violence and seeking assistance from justice institutions, legal aid organizations or relatives was not a crime and should not be prosecuted.

39. Penalties for women convicted of moral crimes range from medium- to long-term imprisonment. Sentences will be clarified in the forthcoming Criminal Procedure Code and

[19] See Afghanistan Independent Human Rights Commission, Annual Report 2012-2013, p. 55.

[20] See Afghanistan Independent Human Rights Commission report to the Fifteenth Annual Meeting of the Asia Pacific Forum, 3-5 August 2010, Bali, Indonesia.

[21] See report of the Sub-Committee on Accreditation of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (October 2014).

are expected to define short-term imprisonment as ranging from three months to one year; medium-term imprisonment as one year to five years, and long-term imprisonment as 5 to 15 years or 15 to 20 years, depending on the crime.[22]

40. Article 17 of the Law on the Elimination of Violence against Women makes reference to article 426 of the Afghan Penal Code, in respect of sexual assaults. If the person against whom the crime is committed is under 18 or meets any of the other conditions laid down in article 427, paragraph 2, of the Code, then the offender is sentenced to a long prison term, not exceeding 10 years. In a recent case, the Kabul City Primary Court sentenced a perpetrator to 20 years imprisonment and a fine of 1,500,000 Afs (approximately $26,000) for rape under article 17 (2), (3) and (5) of the Law and articles 426, 427 and 148 of the Code.

41. The Anti-Human Trafficking and Abduction Law was passed in 2008 with the aim of supporting the victims of human trafficking, especially women and children. Anyone who sexually provokes or involves individuals under the age of 18 in sexual activities or prostitution as his or her profession, or provides them with facilities for such activities, is considered criminally liable and will be sentenced to a maximum of three years in prison. If the exploited person is raped or forced to pederasty, the punishment can increase up to 15 years in prison. Under article 8 of Law on the Elimination of Violence against Women, the penalty for anyone who exploits or forces an adult woman into prostitution increases to 7 to 16 years of imprisonment. If the exploited person is a child, the perpetrator is sentenced to a minimum of 10 and a maximum of 16 years in prison.[23]

42. The Law on Prison and Detention Centres provides that, if the case of an accused person is not finalized within 9 months, the prison administration must notify the relevant court or public prosecutor in writing 15 days before the expiry of the term. If there is no reply, the accused person shall be released from prison.[24] In practice, time limits and other safeguards are seldom applied and women often remain in pretrial detention for much longer than the prescribed period. Although article 86 of the Interim Criminal Procedure Code makes provisions for alternatives to imprisonment while awaiting trial, it is seldom utilized.

43. In 2011, the United Nations Population Fund commissioned an assessment of services provided to victims of gender-based violence by State and non-State agencies in three pilot areas: Bamiyan and Nanghahar provinces and Kabul city. The assessment revealed that most service providers did not have units responsible for addressing the special needs of victims of gender-based violence. Other issues highlighted include the capacity, quality and reach of services provided to victims; the shortage of trained female professionals; and the lack of specialized knowledge and skills among key staff members. Moreover, most health-care facilities did not have separate facilities for examining and interviewing victims of gender-based violence. In terms of access to services, the majority of service providers did not promote the services among target population groups. Service providers often place the responsibility for starting the interaction solely on the victims or their families. As regards the processing of cases, there is a of lack of relevant policies, standard operating procedures, protocols and ethical and safety guidelines regulating the treatment of victims of gender-based violence.[25]

[22] See www.eupol-afg.eu/node/522.

[23] See CEDAW/C/AFG/1-2, paras. 113–117.

[24] See UNODC, "Afghanistan : Female prisoners and their social reintegration" (March 2007), p. 23.

[25] See UNFPA, "Assessment of services provided to victims of gender-based violence by State and non-State agencies in pilot areas" (2011), p. 3.

44. Civil society is composed of both Afghan and international non-governmental organizations. While organizations working exclusively on women's rights are numerically few, they are dynamic and organized. The organizations working directly with victims of gender-based violence have to operate in secrecy, as they are viewed with hostility and victims are often perceived as criminals. For example, shelters are viewed by many as institutions that encourage women to leave home; to behave immorally and outside of what is traditionally considered "acceptable" in a conservative and religious society; or as prostitution houses; or establishments that are causing the break-up of families. Thus both the service providers and those seeking protection are stigmatized and shunned by society.

45. Many of the challenges that civil society organizations face are linked to the generalized context of insecurity, which limits their presence to the least volatile areas, and to the difficulties in accessing funding that enables sustainability. Furthermore, various interlocutors highlighted the lack of consultation during the drafting of legislation and the absence of participatory democracy. The Special Rapporteur was informed that legislation is usually drafted between the Ministry of Justice and international experts and that non-governmental organizations are only consulted in the final stages of the process, after decisions have been made. This was a criticism that was also voiced by some State authorities, and concerns were raised about the consequences of perceptions of the international community and consultants owning the law-making processes.

B. International responses

1. United Nations

46. The United Nations country team in Afghanistan comprises 21 United Nations agencies, funds, programmes and offices, as well as UNAMA, which was established by the Security Council in 2002 at the request of the Government to assist it in laying the foundations for sustainable peace and development in the country. Through its Human Rights Unit, UNAMA supports strategies and mechanisms for combating violence against women, including prevention and remedial mechanisms for female victims of violence. UNAMA is also providing support to the Ministry of Interior to implement and monitor a policy and action plan for the protection of female staff from harassment and abuse. The UNAMA Rule of Law Unit and the United Nations Office for Drugs and Crime are also supporting the Government with the reform of the penal system.

47. The United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women) has been working in Afghanistan since 2002. The agency has provided technical and financial support to the Ministry of Women's Affairs and civil society in the management and operation of 13 women's protection centres and two family guidance centres, as well as in advocacy and awareness-raising to promote prevention of violence against women, operation of the provincial commissions for the elimination of violence against women and resource centres, and training of and coordination between stakeholders concerning legal reform.

48. In 2013, the United Nations Development Programme (UNDP) undertook a review of the functioning of units for the elimination of violence against women in Kabul, Mazar-E-Sharif, Herat and Jalalabad. It recommended the establishment of a court on the elimination of violence against women to enable the units to function effectively, in light of the difficulties of limited management, training and resources, and a high level of corruption or perceived corruption faced in all of the Government ministries, including the

court system.[26] Technical assistance is being provided by UNDP to relevant government institutions to support efforts to develop and implement rights-based guidelines and protocols regulating mediation of registered incidents of violence against women. In 2013, the World Health Organization developed a "Gender-based violence treatment protocol for primary health care in Afghanistan" to improve the delivery of a multi-sectorial response to survivors of gender-based violence. Moreover, the Office of the United Nations High Commissioner for Refugees (UNHCR) supports the implementation of the national internally displaced persons policy and has established women's *shuras* (consultations) to enable them to voice their concerns and participate in decisions that affect their lives.

49. While acknowledging the notable contributions of the United Nations system, the Special Rapporteur observed some duplication of work and the need for better coordination among the agencies in the interest of resource management, efficiency and the achievement of a more substantive improvement of women's rights for all Afghan women.

2. Donor community

50. Since the end of the Taliban era, the international community has made significant investments towards Afghanistan's reconstruction. The Bonn Agreement adopted in December of 2001 led to the adoption of a national Constitution in 2004. It also led to the increase of women's participation in civil and political life and a commitment to respect international human rights law through ratification of or accession to numerous instruments, including the Convention on the Elimination of All Forms of Discrimination against Women. The concluding resolution at the second Bonn conference in 2011 reaffirmed the human rights and fundamental freedoms enshrined in the Constitution, including the rights of women, as well as a thriving and free civil society.

51. The international community pledged over $67 billion at nine donors' conferences from 2003 to 2010. However, it is reported that international aid actually disbursed was significantly less. In July 2012, the international community committed to directing financial support towards Afghanistan's economic development by providing over 16 billion dollars through 2015 and sustaining support through 2017 at or near levels of the past decade. On 4 December 2014, the National Unity Government of Afghanistan and the international community, along with other partners, met in London to reaffirm and consolidate their partnership as they begin the Transformation Decade (2015–2024).

52. Between 2002 and 2009, the United States of America was Afghanistan's largest donor, followed by European Union institutions, the United Kingdom of Great Britain and Northern Ireland, Germany, Canada and Japan. The United Nations, non-governmental organizations, the International Committee of the Red Cross and the International Federation of Red Cross and Red Crescent Societies are important channels of delivery for donor funds. Funding from the United States aims at providing humanitarian assistance for families and communities affected by conflict or natural disasters; and assistance to women that focuses on health, education, economic development, shelters, women's rights and political empowerment.[27]

53. The funding of shelters by international donors is crucial as a long-term solution to the housing needs of women and girls. In most developed countries, shelters are places of temporary refuge and support for women escaping violence. The situation of women in Afghanistan is somewhat different and women who are forced to find shelter in a safe

[26] Claudia Elliott, United Nations Development Programme Consultant, "A report on the critical areas, functions, and gaps and the ongoing work of the elimination of violence against women units in Kabul, Mazar-E-Sharif, Herat and Jalalabad, Afghanistan" (August 2013).

[27] See www.usaid.gov/afghanistan/gender-participant-training.

house risk finding themselves with no way out of their situations. They do not have the option of returning home or to their communities and thus shelters become a long-term residential solution for women and their children. As noted by the previous mandate holder, and confirmed during this visit, the difficulty of finding durable solutions for women who end up in a shelter is compounded by the societal attitude towards shelters, which to a large extent are regarded as places of doubtful reputation. There are also concerns regarding the ability of shelters to provide protection, the management abilities of staff and the long-term reintegration and support that is provided to women. Unfortunately, some shelters have also been used in the past for pretrial detention, owing to the lack of female pretrial facilities.

54. The findings of a 2008 report on aid effectiveness, which were reiterated by interlocutors during the mission, pointed to the fact that one quarter of all aid to Afghanistan had been allocated to technical assistance, which was intended to build Government capacity. It was argued that much of such assistance had been wasteful, donor-driven and of limited impact. Also, in the design or execution of projects, too often the promotion of the capabilities, status and rights of women was a low priority. The report also revealed that most of the aid had been directed to Kabul and other urban centres rather than to rural areas, where it is most needed.[28] Some interlocutors argued that, when bilateral agreements are signed with civil society or United Nations agencies, the benefits of such aid does not reach volatile areas, often owing to the recipients not having nationwide coverage, as opposed to government agencies, which more often do.

V. Remaining challenges

55. The Government of Afghanistan has taken measures to promote the rights of women. However, given the current transitional process, characterized by a new Government, a growing budget deficit and the withdrawal of international troops, the Special Rapporteur expresses her concern about the promotion and protection of women's human rights, including accountability for all acts of gender-based violence. In addition to the generalized context of insecurity, the equal participation of women in decision-making positions and peacebuilding processes and the lack of implementation of legislation and its impact on women's access to justice are some of the key challenges faced by women.

A. Continuum of violence and insecurity

56. Afghanistan is slowly recovering from a long period of conflict, albeit with high levels of insecurity. The consequences of conflict, poverty, underdevelopment, social norms and practices, and the use of religion and culture as justification for control of women in every sphere, all continue to contribute to human rights violations, with women being disproportionately affected. It has been reported that there was a 22 per cent rise in civilian casualties in 2014, with the highest number of women's deaths and injuries from conflict-related violence since 2009. In total, 556 incidents were recorded, involving 909 women (298 deaths and 611 injured). Furthermore, women who were left as sole income-providers after the death or injury of their husbands often experience long-term negative social and economic consequences. Poverty forces many women to give their daughters in marriage to repay debts or take their children out of school, often to work. Widowed

[28] See Matt Waldman, "Aid effectiveness in Afghanistan" (March 2008), p. 2.

women are particularly vulnerable to other forms of violence and abuse from family and community members.[29]

57. Certain areas of the country are outside of the Government's control, and targeted attacks against communities and high-profile women and men by anti-Government elements, both in Government-controlled areas and other areas, are a frequent occurrence. Politicians and policewomen also face threats and violence outside their working environment, often from the anti-Government elements and radicals. In different provinces, numerous women have been forced to quit their jobs or have been killed.[30]

B. Women's participation in decision making and peace building processes

58. As regards women's participation in decision-making positions, under the previous Government, women headed the Ministry of Women's Affairs, the Ministry of Public Health and the Ministry of Labour, Social Affairs, Martyrs and the Disabled.[31] In January 2015, the president announced his 25 ministerial nominees, which included three women nominated to lead the Ministries of Information and Culture, Higher Education and Women's Affairs. The number of women nominated for public office increased to four and, in April 2015, the Afghanistan parliament approved the appointment of four women ministers who would lead the Ministry of Women's Affairs, the Ministry of Higher Education, the Ministry of Labour, Social Affairs, Martyrs and the Disabled and the Ministry of Counter-narcotics.

59. The Constitution has introduced a quota system to ensure a minimum level of female representation in the two houses of parliament. A minimum of two of the elected members of the lower house from each of Afghanistan's 34 provinces must be female. In addition, a third of the upper house seats must be female.[32] Currently, there are 69 out of 249 women in the *Wolesi Jirga* (lower house) and 28 female senators out of 102.[33] As regards the representation of women in the judiciary, while there are no women in the High Council of the Supreme Court, there are 250 female judges in both primary courts and appeal courts throughout the country.[34] As at April 2013, there were 300 female defence lawyers and 250 female prosecutors, including a chief prosecutor in Herat, the only woman ever to hold such a position.[35] The current Chairperson of the Afghanistan Independent Human Rights Commission is a woman.

60. In 2005, a former Minister for Women's Affairs, was appointed governor of Bamiyan. She was the first female provincial governor in Afghanistan's history. In 2009, the first ever female mayor was appointed in Daikundi province.[36] In January 2013, the country's first female district governor in Faizabad district was appointed, making her the only woman appointed among 60 district governors. Unfortunately, amendments made to the Electoral Law in July 2013 reduced the quota for women representatives in the

[29] UNAMA and OHCHR, "Afghanistan annual report 2014: protection of civilians in armed conflict" (February 2015), p. 3.

[30] See www.watchafghanistan.org/files/FactSheets_Women/Women_in_Security_English.pdf.

[31] See Ministry of Women's Affairs, "First Report on the Implementation of the Elimination of Violence against Women Law in Afghanistan" (January 2014), p. 14.

[32] See Peace Research Institute Oslo, "Women's rights and political representation: past achievements and future challenges" (Oslo, 23 November 2013).

[33] See www.unwomen.org/~/media/8FD64A021C8840AC9AE6906D50658487.ashx.

[34] Meeting with the Supreme Court of Justice in Kabul on 9 November 2014.

[35] See Ministry of Women's Affairs, "First Report on the Implementation of the Elimination of Violence against Women Law in Afghanistan" (January 2014), p. 15.

[36] Ibid. p. 14.

Provincial Councils from 25 to 20 per cent. However, there was an increase in female candidacy from 8 per cent in 2005 to 10 per cent in 2009 to 11.4 per cent in the 2014 elections.[12]

61. In terms of the number of women operating in the security sector, it has been reported that, as at 1 March 2014, women constituted 0.4 per cent of the Afghan National Army, 0.75 per cent of the Afghan Air Force, 1.3 per cent of the Afghan National Police and 4.6 per cent of the staff of the Directorate of Prisons.

62. Women are minimally represented in peace negotiations, and women's rights continue to be a low priority in the peace talks agenda. For example, out of 1,600 individuals who attended the Peace Jirga hosted by the Government of Afghanistan in June 2010, only 300 were women. In September 2010, the High Peace Council to seek peace talks with the Taliban was formed, but only 9 out the 70 appointed members were women.[37] Furthermore, interlocutors stated that female members of the High Peace Council played a symbolic role rather than being active participants.

C. Lack of effective implementation of legislation and its impact on women's access to justice and effective remedies

63. As regards to access to justice and accountability for gender-based crimes, while the legal framework provides for sufficient protection for violence against women, there are institutional, procedural and social obstacles limiting women's access to justice. In most instances, women do not use the formal justice system, for reasons including a lack of easy access to the justice system, the ineffective implementation of existing legislation and the overreliance on the informal justice system. During a meeting with representatives of civil society and local councils in Herat, the Special Rapporteur was informed that shuras often deal with cases of violence against women despite legislative measures such as the Law on the Elimination of Violence against Women and the existence of institutions with a legislative mandate to mediate such cases.

64. The Law on the Elimination of Violence against Women is a major legal development in the prevention and elimination of violence against women. The Government has undertaken steps to implement and enforce the Law, including through the establishment of specialized prosecution units for the elimination of violence against women in some provinces and the establishment of family response units within some police stations. However, the Law is not implemented to the same degree in the different provinces, with particularly low levels of implementation in rural areas. In numerous cases, mediation is conducted by *jirgas* and *shuras*, whose membership is limited to men, and solutions are made on the basis of cultural norms rather than using the legal framework, to ensure accountability and effective redress for the victim. Law enforcement agencies such as the Afghan National Police and family response units have a mandate to mediate cases; however, there are no criteria or regulations governing the conduct of mediation.

65. Very few cases of violence against women, particularly cases of rape or sexual abuse, are reported compared with the actual prevalence rates. Women and girls are prevented from reporting acts of violence for various reasons, including deeply engrained attitudes that regard domestic violence as a private matter and the treatment of victims of sexual abuse as perpetrators of *zina*. Other reasons include stigma, shame, discrimination, fear of reprisals from the perpetrators, feelings of guilt and lack of support from friends and family. The Special Rapporteur was informed that, even when women wish to file

[37] See Oxfam, "Behind closed doors" (24 November 2014), p. 17.

complaints, they are often discouraged, and when they file complaints, they are encouraged to withdraw the case. Prosecutors often use one of the objectives of the Law on the Elimination of Violence against Women, defined under its article 2 as the preservation of the family unit, to mediate cases out of the formal court system. As regards protection mechanisms, the main challenges include the insufficient number of shelters and safe houses for women who are victims of violence and the lack of opportunities for women to be reintegrated back into their families and society.

66. Other challenges to women's access to justice include insufficient resources and poor infrastructure and a lack of female police officers and specialized units to specifically address crimes against women and girls. The lack of proper investigation, evidence collection and forensic capacities further hinder women's access to justice. The issue of forced virginity testing to gather evidence for criminal prosecutions represents a serious violation of women's rights to privacy, bodily integrity and dignity.

67. Furthermore, corruption in the criminal justice system is prevalent and represents an obstacle to the rights of due process and fair trial, thus affecting women's access to justice. The Special Rapporteur was informed that bribes were often required for cases to move through the different stages of the criminal justice system. Also, perpetrators can go unpunished if bribes are paid to relevant officials. This creates a culture of impunity and fosters further distrust of the formal justice system.

68. Illegal detention and imprisonment, human rights violations in prisons and the lack of fair and effective implementation of non-custodial sanctions continue to remain a challenge.[38] The Special Rapporteur heard numerous accounts from women in prison and representatives of civil society who corroborated such violations.

69. Victims of violence and representatives of civil society with whom the Special Rapporteur met highlighted the lengthy criminal procedure, the non-respect of protection measures and the inadequate pecuniary and detention sanctions against perpetrators.

VI. Conclusions and recommendations

70. **The Government has undertaken a number of legal and institutional initiatives to meet its human rights obligations and to address the situation of women and girls in the country, despite the continued political, economic, social and developmental challenges. Political commitments to protect and promote human rights continue to be highlighted through the Bonn process, the Kabul Conference, the Tokyo Conference and, most recently, the 2014 London Conference. However, these commitments have not translated into concrete improvements in the lives of the majority of women, who remain marginalized, discriminated against and at high risk of being subjected to violence. In light of the above, the Special Rapporteur would like to reiterate and expand on key recommendations made by her predecessors in 1999 and 2005, many of which remain relevant today.**

A. Institutional machinery

71. **The Special Rapporteur recommends that the Government:**

[38] See UNODC, "Afghanistan: implementing alternatives to imprisonment, in line with international standards and national legislation" (2008), p. xxii.

(a) **Evaluate the mandate, structure and functioning of the Ministry of Women's Affairs and provide it with sufficient human, technical and financial resources to fulfil its mandate;**

(b) **Strengthen the independence of the National Human Rights Commission in accordance with the Principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles), including by ensuring that the nomination and selection process is fair and transparent and ensuring adequate budgetary allocations to enable it to effectively fulfil its mandate;**

(c) **Consider implementing the recommendations of UNDP as highlighted in its review of the functioning of the units for the elimination of violence against women, including aspects related to prosecution;**

(d) **Allocate adequate human, technical and financial resources to ensure that all criminal justice officials can fulfil their mandate, including ensuring fair and equitable distribution of resources across the country.**

B. Law and policy reforms

72. **The Special Rapporteur recommends that the Government:**

(a) **Strengthen the practice of participatory democracy, especially through more effective consultation processes in the law-making sphere;**

(b) **Prioritize the clear codification of family law and the criminal law concerning gender-specific offences to ensure compliance with article 22 of the Constitution, which expressly provides that men and women have equal rights and duties before the law;**

(c) **Ensure that legislation clearly specifies the obligation to register all marriages and divorces;**

(d) **Ensure that the criminal law establishes criminal liability for all parties involved in the organization of child and forced marriages.**

73. **In relation to the reform of the 1960 Penal Code, the Special Rapporteur recommends that the Government:**

(a) **Incorporate gender-specific offences, including rape, into the new penal code. These offences should be clearly defined and the sanctions applicable to each offence should be specified to ensure that gender-specific offences are treated with the same degree of gravity as gender-neutral crimes. A review of all existing laws that include criminal offenses, including the Law on the Elimination of Violence against Women, should be undertaken to ensure consistency;**

(b) **Repeal article 398 of the Penal Code to ensure that perpetrators of honour killings are not granted legal concessions;**

(c) **Revise the Criminal Procedure Code and prohibit degrading practices, including virginity testing, as a source of evidence in criminal investigations;**

(d) **Ensure that there is accountability in cases of self-immolation, including through effective forensic and other investigations;**

(e) **Reform the law pertaining to moral crimes to ensure that it incorporates policies and directives that have been issued.**

74. **In relation to the draft law regulating the jurisdiction of *jirgas* and *shuras*, the Special Rapporteur recommends that:**

(a) **Clear guidelines and policies on the use of mediation to settle disputes be developed, including provisions on non-discrimination and sanctions for non-compliance;**

(b) **The processing of a case by *jirgas* or *shuras* not preclude such cases from being brought before the formal justice system;**

(c) **All gender-based violence cases that have a criminal component be referred to the formal justice system to ensure accountability.**

75. **The Special Rapporteur recommends that the Government repeal the amendment to the Electoral Law so as to ensure that the quota for women representatives in the Provincial Councils is increased.**

C. Women in detention

76. **The Special Rapporteur recommends that the Ministry of Justice, in cooperation with the Ministry of Women's Affairs and the Ministry of Interior, initiate a review, including recommendations in respect of provisions in the penal and family laws relevant to moral offences, of the files of all women and girls currently in detention for crimes generally, and more specifically for "moral crimes", to verify whether:**

(a) **There has been a valid court decision to sentence the detainees to imprisonment, or in the case of pretrial detention, an order by the authority competent under the Criminal Procedure Law;**

(b) **That the women or girls have been found guilty or stand accused of crimes expressly punishable under codified law currently in force;**

(c) **That the women have been given their rights to fair trial and due process.**

77. **The Government should consider alternatives to detention and address the question of transit houses for women who are released from detention.**

78. **The Government should increase the number of shelters for victims of violence against women; strengthen support services for victims, including counselling, medical and rehabilitation services; provide training and skills development programmes; assist with financial and technical support to ensure good practices and sustainability; and develop a strategy to ensure financial support.**

D. Women working in the public sector

79. **The Special Rapporteur recommends that the Government address more fully the safety and security concerns of women working in the public sphere, including women politicians and police personnel, and in particular that it:**

(a) **Undertake an inquiry into the allegations of harassment and abuse of women working in the security sector across the country;**

(b) **Establish and/or strengthen monitoring mechanisms both within the Ministry of Interior and externally, to ensure that women working in the security sector are protected from all forms of abuse, exploitation and harassment.**

E. International community

80. **The Special Rapporteur recommends that the international community, including the United Nations and the donor community, continue to support the Government of Afghanistan in fulfilling its duty to promote and protect the rights of women in Afghanistan. In particular, the Special Rapporteur recommends that the international community:**

(a) **Advocate for the inclusion of women and women's rights issues on the agenda of peace negotiations and set the promotion of women's right as a target for the provision of further funding;**

(b) **Review the actual amount of funding that is currently being given directly to the Government of Afghanistan and to local non-governmental organizations, to enable a more precise picture of who is benefiting from aid. There is a need to address perceptions of large amounts of funding to foreign consultants and United Nations agencies, which are sometimes seen as wasteful and leading to a lack of capacity-building and sustainability of local authorities and service providers;**

(c) **Assist in the review of protection mechanisms, including shelters, in order to find sustainable long-term housing alternatives for women in need of protection. Emphasis should be placed on the empowerment of women and girls through education, skills development and job creation.**